

ESTTA Tracking number: **ESTTA235126**

Filing date: **09/08/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92046965
Party	Plaintiff Gander Mountain Company
Correspondence Address	Paul Mussell Dorsey & Whitney LLP Suite 1500, 50 South Sixth Street Minneapolis, MN 55402-1498 UNITED STATES ueland.kevin@dorsey.com
Submission	Other Motions/Papers
Filer's Name	Kevin S. Ueland
Filer's e-mail	ueland.kevin@dorsey.com, bianchi-rossi.deanna@dorsey.com
Signature	/Kevin S. Ueland/
Date	09/08/2008
Attachments	Gander Gunmen - Motion for SJ - FINAL.pdf ( 3 pages )(13251 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

---

Gander Mountain Company,	)	
	)	
Petitioner,	)	Cancellation No.: 92046965
v.	)	Reg. No.: 3,086,200
	)	Mark: THE GANDERGUNMEN
ELM Development, LLC,	)	
	)	
Registrant.	)	

---

PETITIONER’S MOTION FOR SUMMARY JUDGMENT

TO: Registrant ELM Development LLC, through its attorneys, Christopher J. Schulte and Heather J. Kleibenstein, Merchant & Gould, P.C., 3200 IDS Center, 80 South 8 St., Minneapolis, Minnesota 55402.

Petitioner, by and through its counsel, hereby moves for summary judgment pursuant to Fed. R. Civ. P. 56, that the registration of Registrant’s mark, THE GANDERGUNMEN, Registration No. 3,086,200, be cancelled. This motion is made on the grounds that Registrant’s mark fails to function as a service mark, and that Registrant’s mark is invalid because Registrant committed fraud by making one or more material misrepresentations of fact to the United States Patent and Trademark Office that Registrant knew, or should have known, were false.

Petitioner’s motion is supported by:

- (1) Petitioner’s Memorandum in Support of Its Motion for Summary Judgment;
- (2) The Declaration of Kevin S. Ueland, and exhibits attached thereto; and
- (3) The pleadings herein.

\* \* \*

Respectfully submitted,

GANDER MOUNTAIN COMPANY

Date: September 8, 2008

By: /Kevin S. Ueland/  
Elizabeth C. Buckingham, Esq.  
Kevin S. Ueland, Esq.  
DORSEY & WHITNEY LLP  
50 South Sixth Street, Suite 1500  
Minneapolis, Minnesota 55402-1498  
Tel: (612) 340-2600  
Fax: (612) 340-8856

ATTORNEYS FOR PETITIONER

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served via first-class mail, postage prepaid, to Christopher J. Schulte and Heather J. Kliebenstein of Merchant & Gould P.C., 3200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402 this 8th day of September, 2008.

/Kevin S. Ueland/

Kevin S. Ueland